IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 195 of 1982

with

INCOME TAX REFERENCE No 326 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

COMMISSIONER OF INCOME TAX

Versus

M K S RANJITSINHJI

Appearance:
MR D.A. MEHTA, MR. R.K. PATEL & MR B.D. KARIA, Advocates
for the assessee
MR B.B. NAYAK with MR MANISH R. BHATT Advocates
for the Revenue.

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE KUNDAN SINGH

Date of decision: 10/02/98

ORAL JUDGEMENT (R.K.Abichandani,J.)

The following two common questions have been referred by the Income Tax Appellate Tribunal, for the opinion of this Court under Section 256(1) of the Income Tax Act, 1961, in these two references.

At the instance of Revenue:

(1) "Whether, the Appellate Tribunal has been right in law in holding that since the assessee was given cash annuity in lieu of the resumption of the grant of two villages, the annuity income should be taken as HUF income in the hands of the assessee, if he had the capacity of HUF for the relevant period in question?"

At the instance of Assessee:

(2) "Whether, on the facts and in the circumstances of the case, the Income tax Appellate Tribunal was justified in not holding that cash annuity in lieu of resumption of two villages for life time is capital receipt?"

The Income Tax Reference No. 195/82 relates to the Assessment Years 1973-74 to 1975-76, while the Income Tax Reference No. 326/83 relates to the Assessment Year 1977-78.

2. The assessee belongs to the erstwhile ruling family of Wankaner. The ex-ruler of Wankaner, by his order No. 28 of Samvat Year 2004 (i.e. dated 2nd February, 1948), granted "Kapal Giras" to the assessee who was his grandson, as per the custom prevalent in the State. Under this "Kapal Giras" the assessee was given the villages of Wankia and Ratidevdi. As per the Revenue survey, the total area of village Wankia was 1904 acres and 10 guntas and the relevant portion of the village Ratidevdi was about 1991 acres and 24 guntas. The total area was thus, 4895 acres and 34 guntas. The land has been described throughout this order as "Jagir" given to the assessee under this grant. It was ordained that the name of the assessee should be entered in the record of rights and that possession of the said jagir should be handed over to him. The Revenue Department was directed to prepare a separate title deed of the said jagir in favour of the assessee and take the necessary steps to implement the order. The revenue of the current year which was recovered till the date of the order from these villages, was to be handed over to the assessee. As recorded in clause 12 of the order, the possession of the

jagir was handed over to the assessee on the date on which this order was issued.

3. On 30.3.1950, the then Government of Saurashtra in its Revenue Department (Political) issued Resolution No. 27/1950 in respect of the said grant of villages Wankia and Rati Devdi and it was ordered that it was decided to resume the grant and the grantee was to be paid a cash annuity in lieu thereof for his life time. As the rival contentions center around this resolution, it is reproduced hereinunder:-

"THE GOVERNMENT OF SAURASHTRA
Revenue Department (Political)
Rajkor D/30th March, 1950.
Resolution No. 27 of 1950.

GOVERNMENT RESOLUTION

In pursuance of the decisions taken at Jamnagar conference of December 1948 and January 1949, the grant of village Wankia and Rati Devdi made by the Ruler to the person named below has been decided to be resumed and the grantee is to be paid cash annuity in lieu thereof. The cash annuity shown against the name of the grantee is payable to the grantee with effect from the 1st January, 1950.

WANKANER Cash Annuity
K.S. Ranjitsinhji Pratapsinhji Rs. 22,501/-

The allowance is payable to the grantee only for his life time.

By order
Sd/- T.L. Shah
Secretary to the Government of Saurashtra."

Thus, from 1st January, 1950, the assessee was to be given cash annuity of Rs. 22,501/- in lieu of the grant of villages Wankia and Rati Devdi made by the Ex-ruler to him. It will be noted that on 30th March, 1950, the Saurashtra Grants (Resumption) Ordinance, 1949 which was first published in the Gazette on 13th January, 1950 and was amended by Ordinance No. VI, 1950 was operative. The Ordinance was promulgated to provide for the resumption or cancellation of certain grants and transfers. As stated in the preface to The Saurashtra Code, Volume I (Part-I), the State of Saurashtra came

into existence with the signing of the covenant for the formation of Kathiawar by the Ruler of thirty States on 23.1.1948. The territories of a large number of semi-jurisdictional and non-jurisdictional talukdars and estate-holders were included by separate Merger Agreements. Some other States came to be included a year later by a supplementary covenant executed on the recommendation of the elected representatives of the people of these territories. The province was thus brought under one Government. The Government of the State of Saurashtra was, by Section 3 of the said Ordinance, empowered to make notified orders directing that the grant shall be deemed to have been invalid and have no effect whatever, or directing the grant to be resumed or cancelled, either forthwith or from a specified date, and was also authorised to give supplemental, incidental and consequential directions as it thought fit in the circumstances of the case by the same notified order or any subsequent order. The effect of orders made under Section 3 was, as provided in Section 4, that the land comprised in the grant in respect of which the notified order was made, was deemed to vest in and belong to the Government and any right, title or interest which the grantee or any person claiming through him may have had or claiming therein was to determine. Thus, on issuance of the notified order resuming the grant, the rights of the grantee stood extinguished. As provided by Section 5, no notified order made by the Government under Section 3 of the Ordinance could be called in question in any Court. The grants in respect of which notified orders could be made, were specified in the Schedule created under Section 3 of the Ordinance, and the grant which was made in favour of the assessee figured at entry 60 of the Schedule which reads as under:-

60. "WANKANER

1. Full description of land:-

Village Vankia (1904 acres 10 Gunthas)
Khalsa in Village Rati Devli (1991 acres 24 Gunthas)

2. Name and full description of grantee:-

K.S.D. Ranjitsinhji Pratapsinhji of
Wankaner.

3. Full description of document by which the
grant was made:-

Hazur Javak No. 28 dated the 2nd February, 1948."

Since the Government of Saurashtra was empowered to direct resumption of grants mentioned in the Schedule Created under Section 3 of the Ordinance including the grant which was made in favour of the assessee, it would be reasonable to assume that the resumption of the assessee's grant under the Government resolution dated 30.3.1950 was referable to these powers of the Government and that the grant was resumed by issuing the said notified order in exercise of its powers by the Government of Saurashtra conferred upon it under the provisions of Section 3 of the Ordinance.

It appears that for some reason, which is not clearly forthcoming, the amount payable under the Resolution order dated 30.3.1950 to the assessee was with-held from October, 1963 to October, 1969. However, it came to be released as is reflected from the order of the Collector, Rajkot dated 6.2.1970, a copy of which is at Annexure "E" of the paper-book. The amount was to be debited by the Government under the Head - "76 other Misc. Compensation and Assignment - A-2- division in lieu of resumed lands", as sanctioned under the said grant.

The cash annuity of Rs. 22,501/- which was payable under the resumption order in lieu of the grant of the villages which were resumed, was shown by the assessee in the return of income for the Assessment years 1951-52 to 1953-54 and at that time, the assessee had contended that the said amount of cash annuity was not taxable in view of the fact that it was a capital receipt. That contention came to be negatived by the ITO relying upon the decision in Maharajkumar Gopal Saran Narain Singh V. Commissioner of Income Tax, Bihar and Orissa, reported in Volume III (1935) ITR 237. In appeal, the AAC by his consolidated order dated 16.12.1954, dismissed the appeals of the assessee holding that the cash annuity of Rs. 22,501/- received by him from the Government was an income which was chargeable to tax. The assessee did not carry the matter further and offered the cash annuity for tax in each of the assessment orders upto Assessment Year 1972-73. However, at the hearing before the ITO in respect of the Assessment Year 1973-74, the assessee's authorised representative put in writing by letter dated 28.7.1975

the contention of the assessee that the cash annuity of Rs. 22,501/- was not an income and that it was a capital receipt. It was also submitted that the said amount was received by the assessee in the nature of compensation granted by the Government in lieu of taking over the villages from the assessee. The Income Tax Officer negativing the assessee's contention, held that the cash annuity which was payable during the life time of the assessee could not be treated as compensation and that the assessee had in fact exchanged the capital asset for a life annuity of Rs. 22,501/- per annum, which was in the nature of income. It was held that the case was fully covered by the decision of the Privy Council in Maharajkumar Gopal Saran Narain Singh (supra) and that the decision of the Supreme Court in the case of SRV Shivram Prasad Vs. CIT reported in CIT, A.P 82 ITR 527 on which the assessee relied, had no application to the facts of this case. As regards the contention, which was raised during the hearing by the assessee that the income should be assessed as that of the HUF on the ground that the impartible asset belonged to the joint family, it was held that these villages were given to the assessee who was the grand-son of the Ruler as per the custom and that it was not an estate belonging to the HUF. The ITO held that the status of the assessee was of individual and not of HUF as claimed during the hearing in the letter dated 28.7.1975.

On appeal, the order of the ITO was confirmed by the AAC. On further appeal to the appellate Tribunal, the Tribunal held that the grant of two villages to the assessee as "Kapal Gira" were in the nature of HUF property, because, the grant was made from the ancestral impartible estate and as the assessee was given cash annuity in lieu of the resumption of the grant, the annuity income should be taken as HUF income in the hands of the assessee. The Tribunal held that the cash annuity in lieu of the resumption of grant should be treated as annuity income and not capital receipt. The Tribunal also held that the decision of the Supreme Court in SRV Shivram Prasad Behadur (supra) and other decisions on which reliance was placed did not help the assessee in his contention that the sum which was payable as cash annuity was a capital receipt and was paid by way of compensation for resumption of his villages. In the above background, the aforesaid two questions; one at the instance of the Revenue and the other at the instance of the assessee, have arisen from the order of the Tribunal for our consideration.

4. By question No.1, which is raised at the instance of the Revenue, we are called upon to decide whether the Tribunal rightly held that the amount should be treated as HUF income in the hands of the assessee. The factual background shows that the grant of these villages was given by the then Ruler to the assessee, who was his grand-son, as per the tradition and this grant was known as "Kapal Giras". The expression "Kapal Giras" as defined in Bhagvatgomandal means, "jagir given to the Princes or `Bahayats' for their maintenance". The contention that the assessee had received the grant as a member of the family, found favour with the Tribunal on the basis of a mention of the family tradition, as per which "Kapal Giras" was to be given to the grand-son, in the first paragraph of the grant. In this connection, it will be noted that the AAC had disallowed the claim of the assessee on the ground that at the material time, the villages had already been given to the assessee and that what Section 10(2) of the Act exempted, was only the sum paid out of the income of the estate belonging to the family and that as the source itself was parted with by the family in favour of the assessee, the income derived out of that source accrued to the assessee and not to the impartible estate belonging to the family. The Tribunal, however, noted that the case of the assessee did not depend upon the exemption under Section 10(2) of the Act, but what he contended was that the annuity income in his hands was HUF income itself and that it was not liable to tax in his capacity as an individual. The Tribunal found that the "Kapal Giras" was in the nature of HUF property in the hands of the assessee because it was made from the ancestral impartible estate.

There is no dispute about the fact that from 1950-'51 upto 1972-73, the assessee had filed his returns as an individual and it was never his case all throughout those years that the cash annuity which he received was the income of the HUF. The learned Counsel appearing for the assessee in order to support the decision of the Tribunal on this count, placed reliance on the decision of the Rajasthan High Court in Thakur Gopal Singh V. CWT, reported in 99 ITR 345. However, in that case there was no controversy between the parties that the jagir was ancestral and impartible. In the facts of that case, it was held that merely because the property was ancestral and its succession was governed by the rule of primogeniture, it did not mean that the estate was not capable of being a joint family property. In our view, for ascertaining as to whether the grant was meant for the assessee as an individual or that it was held by the HUF of the assessee, the matter is required to be decided

from the nature of the grant and the source from which it emanated. The ex-ruler had an absolute right over the villages, which he granted to the assessee. Merely because the grant was made as per the family tradition, that would not mean that the ruler held the villages as a part of the family estate. The wordings of the grant clearly show that it was intended to be given only to the assessee and not to all the family members of the assessee. The villages did not come in the hands of the assessee by way of any ancestral property devolving on him, but they were what is described in the grant as a `jagir' meant for the grand-son i.e. the assessee, as per the family tradition. The assessee also took it as a grant for himself and it was never treated by him as something which belong to his HUF and not to him alone. The conduct of the assessee, in the background of the nature of the grant, of filing the returns and showing the receipts as his individual receipts for over two decades from 1950-51 upto 1972-73 could not have been so lightly ignored by the Tribunal. This was a very material feature of the case, which did not attract the attention of the Tribunal. Even in the decision of this Court in Pari Mangaldas Girdhardas V. Commissioner of Income Tax, reported in 1977 CTR (Guj.) 647, on which reliance was placed on behalf of the assessee by his learned Counsel, the Court, while holding that principle of reprobate and the bar of estoppel cannot be invoked against an assessee and the assessee can change his stand, in terms held that the conduct of the assessee in relation to past years would be relevant if he fails to furnish any satisfactory explanation. The assessee undoubtedly would be entitled to give an explanation as to its earlier conduct and to urge that he had taken a stand that he committed a mistake or error. In the present case however, the assessee who for over a period of two decades had shown his receipts as individual receipts, while suddenly during the course of argument for the relevant year raising a question in a letter through his representative, did not at all explain his conduct of all those years of treating these receipts as his individual receipts. The Tribunal was, in our opinion, therefore in error in holding that the cash annuity which was received by the assessee should be taken as HUF income in the hands of the assessee and the question No.1 will therefore, have to be answered in the negative against the assessee and in favour of the Revenue.

5. The major controversy however, in these proceedings have centered around the question No.2, which has been raised at the instance of the assessee. Voicing

his grievance against the Tribunal not holding that cash annuity in lieu of resumption of two villages for life was capital receipt, the learned Counsel appearing for the assessee argued that though described as a cash annuity the amount which was to be paid to the assessee under the resumption order was in fact and in reality, compensation payable in lieu of the extinguished capital of the assessee. It was submitted that the `jagir' which was granted to the assessee was an income producing asset and that source stood extinguished by a notified order, which was relatable to the provisions of Sections 3 and 4 of the said Ordinance. It was submitted that the cash annuity which was given, was not annuity properly so called and these were only annual payments for life given to the assessee in lieu of resumption of the "jagir", which was given to the assessee under the said grant. It was submitted that the compensation which was paid under the resumption order was not compensation for the loss of income, but it was compensation for the loss of the estate and therefore, the amount should be treated as capital receipt in the hands of the assessee. It was further argued that merely because periodic payments till the life time of the assessee at the amount fixed was ordered, it could not be said that the payment was not an annual payment of compensation for life and that it was annuity, which could be taxed as income. In the alternative, it was submitted that if it was held that there was no provision for compensation since the resumption order did not use that expression of "compensation", the payment should be treated as a voluntary ex-gratia payment and not as income. It was submitted that in reality, even if it was treated as compassionate or voluntary ex-gratia payment it would, in effect, amount to a sort of compensation to the assessee. Reliance was placed by the learned Counsel in support of his contentions on the decisions of the Supreme Court in SRV Shivram Prasad Behadur Vs. C.I.T, reported in 82 ITR 527; Padmaraje R. Kadambande V. CIT, reported in 195 ITR 877; on the decision of the Rajasthan High Court in the case of Eklingji Trust Vs. CIT, reported in 158 ITR 810 and the decision of the Bombay High Court in H.H. Maharani Shri Vijaykuverba Saheb of Morvi Vs. CIT, Bombay, reported in 49 ITR 594.

The learned Counsel appearing for the Revenue argued that the grant which was made in favour of the assessee by the ex-ruler, was intended for his maintenance and there was no capital asset transferred to the assessee under that grant. It was submitted that the use of expression "cash annuity" in the resumption order was conclusive and the word "annuity" clearly suggested

that what the assessee was to get, was an yearly income during his life time. It was submitted that the capital asset if any, was transferred for a life annuity and therefore, the receipt of life annuity was an income. It was submitted that cash annuity which was given, was not relatable to the quantum of value of the capital asset and these amounts cannot therefore be treated as payment of a capital sum by instalments. Reliance was placed by the learned Counsel in support of his submissions on the decision of the Privy Council, in the case of Maharajkumar Gopal Saran Narain Singh (supra); decision of Bombay High Court in H.H Maharani Shri Vijaykuverba Saheb of Morvi & anr. (supra); decision of Patna High Court in Sayed Sadat Abdul Masud Vs. CIT, Bihar, reported in 118 ITR 939, decision of Kerala High Court in Sreepadam (HUF) Vs. CIT, reported in 172 ITR 471 and the decision of the Supreme Court in CIT, U.P Vs. Kunwar Trivikram Narain Singh, reported in 57 ITR 29.

6. In the facts noted above, we have referred to the nature of the grant which was made in favour of the assessee. The grant clearly speaks of a title deed of `jagir' being given to the assessee and to the fact that the possession of the area of the two villages, which were granted, was handed over to the assessee. Even the resumption order refers to the lands of the two villages being resumed. It would therefore, be erroneous to contend that there was no capital asset given under the said grant to the assessee. The assessee acquired status of a "Kapal Girasdar" coupled with possessory rights in the villages and as a grantee, right to collect the revenue therefrom. It is not as if under the said grant some specified amount only was given by way of maintenance to the assessee. We therefore, cannot accept the contention of the learned Counsel for the Revenue that there was no capital asset given under the grant to the assessee by the ex-ruler and that only the revenue income from the villages was the subject matter of that grant.

7. We now proceed to examine the stand of the Revenue that the description of the payment which was to be given for life time of the grantee as `cash annuity' conclusively indicated that annuity income was intended to be given to the assessee. The word "annuity" as used under the taxing statutes, for taxing annuities of income, has a definite meaning. The word annuity occurred in clause (viii) of sub-section (24) of Section 2 which defined income. An annuity payable by an employer would be taxable under Section 15 of the said Act and other annuities would fall under Section 56 under

the head Income from other sources.

In Foley Vs. Fletcher (3 H&N 769, at 785 = 117 RR 967), an annuity was defined by Baron Watson as folows:-

"An annuity means where an income is purchased with a sum of money, and the capital has gone and has ceased to exist, the principal having been converted into an annuity".

Therefore, if the annual income is purchased in return for the capital, such annual payment would be taxable. However, if it is a payment of capital sum, it would not be taxable, except where there are capital gains. In annuity, the annuitant pays the consideration of a sum of money or property as the price of the annuity. It partakes the character of an investment on which a person receives a fixed payment for a lifetime or a specified number of years. Such an annuity which has no colour of capital would be exigible to income tax.

The Income Tax law would be concerned with this meaning of the word annuity, which stipulates purchase of income for a sum of money or property. The word "annuity" has a simpler meaning also and it is defined in the Concise Oxford Dictionary also to mean "a yearly grant or allowance" or "a sum payable in respect of a particular year". The question therefore is whether the word "annuity" in the resumption grant is used in its classic sense relatable to the provisions of the Income Tax Act, or simply so as to mean an annual payment which has nothing to do with any purchase of income in exchange of a sum of money or property. The fact that annual payments are some times loosely called "annuities" where they are in fact annual instalments of capital, is judicially recognized. In order to decide whether the word "annuity" is used in its classic sense relevant for the income tax law for the purpose of imposition of tax by treating it as income or whether it is used only so as to mean an annual capital payment, it would be necessary to examine the nature of the transaction which provides for payment of annuity. The Income Tax Act does not tax capital as income. The income-tax is not payable upon that part of a so-called annuity, which represents capital. If the annual payment is made towards the loss of income producing asset, and such payment is taxed as if it was income in each year, that would result in taxing a part of capital, which is not the intention of the Income tax Act. We have therefore, to ascertain the real nature of the payment which was intended to be made

under the resumption order and one cannot be carried away by the mere expression "cash annuity" used therein or by the fact that it was payable to the grantee for his life time. A capital sum can be paid in lump or it may be spread over a period of time, but that would be only a matter of convenience and can not be decisive for holding that payments made in instalments or on a yearly basis for life would necessarily be annuities properly so called, so as to be exigible to tax under the Act.

By the resumption order contained in the resolution dated 30.3.1950, the Government resumed the grant of two villages, which were described as a "jagir" in the grant, and it was simultaneously ordered that the grantee i.e. the assessee whose name was mentioned therein, was to be paid a cash annuity of Rs. 22,510/in lieu thereof. It was stated that the said allowance was payable to the grantee only for his life time. From this resumption order, it cannot be said that the assessee had purchased the annuity income in exchange for his jagir. The cash annuity which was to be paid, was not in the nature of income purchased for a price by the assessee. The resumption of grant under this notified order was relatable to the provisions of Sections 3 and 4 of the Saurashtra Grants (Resumption Ordinance), 1949, which empowered the Government of the State of Saurashtra, inter-alia, to resume the grant and to provide for incidental and consequential matters. In this background, it can never be said that the assessee had purchased income by surrendering his capital asset viz. - `jagir', under the said grant. The said grant was resumed and it was simultaneously decided to pay cash annuity in lieu thereof, with effect from 1.1.1950. On a true construction of the resumption order, the cash annuity was being paid to the assessee because his grant of the two villages was resumed and there was no question of the assessee purchasing any annual income. Such resumption had the effect of the capital asset of the assessee, which was an income producing estate, being lost to the assessee and in lieu of such capital loss, the reimbursement was being made by providing for payment of a determined amount only during the life time of the assessee. This payment was clearly intended to compensate for the loss to the assessee, which was caused by virtue of his capital estate being taken over under the resumption order warranted by the Saurashtra Grants (Resumption Ordinance), 1949. These annual instalments though described as cash annuity, were, when the substance of the transaction is looked at, not income, but were only intended to be payments towards the loss of the income producing asset of the assessee and therefore,

they were capital receipts. It will be noted that these periodic payments described as cash annuity were required to be debited by the Government under the head "76 Other Misc. Compensation and Assignment - A-2 pension in lieu of Resumed Lands", as can be seen from the last paragraph of the order of the Collector, Rajkot dated 6.2.1970, though we hasten to add that we do not base our decision on that aspect. This is only to show that even the Government treated it as compensation, which was being paid to the assessee in lieu of the resumption of lands included in the jagir granted to the assessee under the said grant.

Though there was no provision for payment of compensation in the Saurashtra Ordinance, which provided for issuing notified orders for resumption or cancellation of grants mentioned in the Schedule, there was nothing in the law to prevent payment of compensation. On the contrary, the constitutional scheme as it prevailed on the date on which the resumption order was issued on 30th March, 1950, provided in Article 31(2), for payment of compensation to be fixed by the law providing for acquisition or requisition of property. Even Section 3 of the Ordinance while empowering the State Government to make notified orders, inter-alia, for resumption of grants, left it to the Government to give all supplemental, incidental and consequential directions as it may think fit in the circumstances of the case. Therefore, it would be reasonable to assume that the payments required to be made under the resumption order simultaneously on resumption of the grant of two villages, were in reality intended to compensate the assessee for the loss of his capital asset i.e. the `jagir' described in the grant consisting of the said two villages. The true quality of the payment as noted above, which is decisive of the character of payment, clearly shows that the payment though described as cash annuity, was not annuity in the sense of purchase of income, but it was annual payment of compensation to the assessee for the loss of his income producing asset. These payments were therefore, in our opinion, clearly capital receipts in the hands of the assessee and could never be termed as income. Such capital receipts would not be taxable except as capital gains and any tax on such capital receipts would amount to taxing the capital, which was not the intention of the Income Tax law.

Where a voluntary payment is made entirely without consideration and is not traceable to any source which a practical man may regard as a real source of

income, but depends entirely on the whim of the donor, such payment cannot fall in the category of income. Therefore, even if, for the sake of argument, the amount was paid under the resumption order voluntarily and without any consideration and was not traceable to any real source of income depending entirely on the pleasure of the Government, such payment would not fall in the category of income. However, as held by us hereinabove, we are clearly of the view that the amount of cash annuity payable under the resumption order to the assessee was by way of compensation for loss of his income producing asset - namely the jagir consisting of two villages given to him under the grant, which was received by the Government.

8. We draw light for our aforesaid conclusion from the decisions of Hon'ble the Supreme Court in the case of Shivram Prasad Bahadur (supra) and Padmaraje R. Kadambande (supra).

In Shivram Prasad Bahadur's case, the Supreme Court was dealing with a question as to whether interim payment received by former holder of an estate, whose estate vested in the Government under a statutory provision, was of capital nature or not. That interim payment was received by the former holder under a statutory provision - namely, Section 50(2) of the Madras Estates (Abolition and Conversion of Ryotwari) Act, 1948. These interim payments were not to be treated as a part of compensation, which the Government was liable to deposit under Section 41 of the Act. The Supreme Court held that though these interim payments were not part of the compensation, which was required to be deposited under Section 41 or in lieu of compensation that did not mean that these payments cannot be compensation for the recurring loss caused to the owner because of the taking away of an income producing assets without payment of compensation. It was held that the interim payments though not compensation under Section 41, were a part of the total compensation payable for the acquisition of the estates. The Supreme Court referred to its earlier decision in Senairam Doongarmall Vs. CIT, reported in 42 ITR 392 at 397, which referred to the decision in Van den Berghs Ltd. V. Clark of the House of Lords, reported in (1935) 3 ITR (English Cases) 17 and in which the Supreme Court quoted with approval the following dictum of Lord Macmillan: "there is no relation between the measure that is used for the purpose of calculating a particular result and the quality of the figure that is arrived at by means of the application of that test". It was noted

that this proposition was followed in numerous cases under the Indian Income Tax Act and also by the Supreme Court. It was held that, it is the quality of the payment that is decisive of the character of the payment and not the method of the payment or its measure, and makes it fall within capital of revenue. In Shivram Prasad Bahadur's case, the Supreme Court considered in detail the decision in Raja Rameshwara Rao Vs. CIT, reported in 49 ITYR 144, on which much reliance was placed on behalf of the Revenue in the present matter. It was noted that the maintenance allowances paid in that matter were quite clearly revenue receipts. The Supreme Court in Raja Rameshwara Rao's case (supra) held on interpretation of Section 14 of the Regulation that the interim maintenance allowances paid under that Section were revenue receipts on which income tax could be imposed. It was observed that the administrator of jagirs took away the management of the estate pending the making of the provision for determination of the commutation amount and till the payment of the commutation sum, the administrator merely managed the estates on behalf of the former owners of those estates, which appeared to be the position, as noted by the Supreme Court, from Sections 5, 8, 11 to 14 of the first Regulation. In Shivram Prasad Bahadur's case, the Supreme Court for these reasons held that the observations made in Raja Rameshwar Rao's case should be read in the light of the facts of that case. Therefore, Raja Rameshwar Rao's case (supra) cannot assist the Revenue.

In Padmaraje R. Kadambande's case (supra), the Supreme Court was concerned with the question whether certain amounts received by the assessee by way of compassionate payment under Clause (d) of Section 15(1) of the Bombay Merged Territories Miscellaneous Alienation Abolition Act, 1955, were receipts of an income nature or not. The Supreme Court approved the ratio of the decision of the Bombay High Court in H.H. Maharani Shri Vijaykuverba Saheb of Morvi (supra) in which it was held that a voluntary payment without consideration, cannot fall in the category of income. The Supreme Court observed that even in the case before it, the position was exactly the same as there was no compulsion on the part of the Government to give any allowance and it was purely a discretionary matter. In this decision also the Supreme Court considered the earlier decision in Raja Rameshwar Rao's case, in which it was held that interim maintenance allowance was taxable income and after noticing the ratio of its decision in Shivram Prasad Bahadur's case, the Supreme Court proceeded to caution

that the observations made by it in Raja Rameshwar Rao's case must be read in the light of the facts of that case. On the question as to whether periodic payments would lead to any inference of their being income, the Supreme Court approvingly referred to its earlier decision in P.H. Divecha V. C.I.T., reported in 48 ITR S.C 222, in which it was held that periodicity of the payment does not make the payment a recurring income because periodicity may be the result of convenience and not necessarily the result of the establishment of a source expected to be productive over a certain period. The Supreme Court came to the conclusion that the amounts received by the assessee by way of compassionate payment were in reality compensation and were not income receipts and ought to be regarded as capital receipts.

In Eklingji Trust's case (supra), the Rajasthan High Court was concerned with a controversy whether the amount received by the assessee by way of compensation for the jagir lands of the assessee resumed by the State were capital receipts or revenue receipts. In that case there was a provision in the schedule referred to in Section 26 of The Resumption of Jagirs Act, in which it was, inter-alia, provided in respect of charitable and educational institutions that, "the Government shall pay by way of compensation, an annuity in perpetuity equal in amount to the net income from such jagirs lands in or for the basic year, to the person charged for the time being with the duty of the maintenance of the institution or place of worship or performance of such service." The High Court relying upon the decisions of the Supreme Court in Shivram Prasad Bahadur's case (supra), P.H. Divecha's case (supra) and Ukhara Estate Zamindari P.Ltd. Vs. CIT, reported in 120 ITR 549(S.C), found that the compensation paid was for resumption of jagir lands i.e. for taking away the estate and so it was a capital receipt.

In view of the above discussion, it becomes clear that the cases referred to on behalf of the Revenue which were decided in context of annuities property so called, cannot assist the Revenue in the present case in which annual payments were intended to be compensation for loss of income producing asset. In Maharajkumar Gopal Saran Narain Singh's case, the Privy Council was concerned with the item of annuity and the facts show that these annual payments were purchased for a greater portion of the estate by the assessee. There, the source of the life annuity was the covenant and the Privy Council found that the life annuity was the produce of one of the items

namely the covenant, which the appellant had taken in exchange for the estate. That decision therefore, cannot assist the Revenue.

In Sayed Sadat Abdul Masud Vs. CIT, reported in 118 ITR 939, on which much reliance was placed on behalf of the Revenue, on examining the true nature of the transaction, it was found that though the assets had vested in the State of Bihar, the income from the assets continued to flow for the purposes of the trust and it was not a case where the capital value of the assets was being paid in annual instalments. In this context, it was held that the income arising from the trust properties were to be continued to be paid to the trust, with the only difference that after the vesting of the estate, it was to be paid by the State, and the annuity received, therefore, continued to bear the same character as it had when the assets, out of which the income arose, were held in private hands. This decision also cannot assist the Revenue.

In Sreepadam HUF (supra), the Kerala High Court following the decision of the Supreme Court in CIT Vs. Kunwar Trivikram Narain Singh, reported in 57 ITR 29, in which it was held that where an owner of the estate exchanges a capital asset for a perpetual annuity, it was ordinarily taxable income in his hands, held that the fact that the annuity was payable for all times to come, showed that what was paid every year was not an instalment of the capital sum. It was observed that if that were so, there would be no question of paying by instalments in perpetuity even after exhausting the capital. We are not concerned with the case of annuity which is to be paid in perpetuity. In the case before us, the cash annuity which was intended to be annual payment of compensation, was to be paid only during the life time of the assessee and from the true nature of the payment, it was by way of compensating the assessee. Therefore, the decisions of the Kerala High Court in Sreepadam's case and of the Supreme Court in CIT Vs. Kunwar Trivikram Narain Singh (supra), cannot come to the rescue of the Revenue.

9. The following position therefore, emerges:-

1. There was no element of purchase of income involved where a grant was resumed and instead a

fixed amount was payable annually for life;

2. The payments which were to be made under the resumption order were directly relatable to the taking away of the income producing assets and therefore, were in the nature of compensation for that capital asset;

3. When payment is made simultaneously while resuming a grant, there would be a presumption that the payment was by way of compensation in absence of any statutory provision to the contrary.

4. A grant of villages described as a jagir in the order was not a mere right to collect the revenue, but it was coupled with status as a "Girasdar" with possessory rights over the villages granted, including the right to recover the revenue. Therefore, the taking away of such grant resulted in loss of capital asset to the assessee which was reimbursed by fixing an annual amount by way of compensation to be debited under the head of "Miscellaneous Compensation" by the Government;

5. The annual payments of compensation amount for life to the assessee in lieu of resumption of grant which consisted of a jagir of two villages known as "Kapal Giras" did not amount to any payment taxable as annuity under the Income Tax Act;

6. Annual payment for life, in lieu of the resumed grant of the two villages, was clearly a capital receipt in the hands of the assessee.

In view of the above discussion, we hold on question No.2 that the Tribunal committed an error in holding that the cash annuity in resumption of two villages, was an income and not capital receipt in the hands of the assessee.

10. In both the References, for the reasons given above, the question No. 1 is answered in the negative in favour of the Revenue and against the assessee, and the question No.2 is answered in the negative in favour of

the assessee and against the Revenue.

Both the references stand disposed of accordingly with no order as to costs.

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